by the breaking of the glass in the side windows of the car. The glass was broken by the collision of the car with a wagon in the street, and the court said: 'The evidence fails to show negligence on the part of the defendant. The case at bar is not within the doctrine of res ipsa loquitut. That doctrine does not establish liability where a definite cause is clear on the evidence. It applies only when the cause, although unexplained, does not happen according to common experience without fault on the part of the defendant.'

"In the case of Loehner *v.* North Chicago, etc., Co. et al. (116 Ill. App., 365), the plaintiff was injured while a passenger upon defendant's railway car by reason of the rear wheels of a coal wagon slipping and throwing the rear end of the wagon box in contact with the car. It was insisted that the fact that plaintiff was injured while a passenger in car of said defendant company raised, as against said carrier, a presumption of negligence. In considering this question the court said: 'There is no doubt but such is the general rule. But there is a well-defined exception to this rule, namely, that where the approximate cause, at least in part, was the act of a third person over whom the carrier had no control, the presumption of negligence from the happening of the accident does not arise, but the duty of proving the negligence of the carrier rests upon the passenger.'

"In the case of Black *v.* Boston, etc., Co. (187 Mass., 172, 72 N E. 970), which was an action to recover damages for personal injuries sustained while riding as a passenger upon one of defendant's cars, the court said: 'To recover, the burden was on the plaintiff to prove that the collision was caused by negligence of the defendant. In place of proving that so far as the proof went it showed that it was caused by the negligence of the driver of the car.' A peremptory instruction to the jury to find for the defendant was sustained.

"In Long *v.* Penn. R. Co. (147 Pa., 343, 23 Atl., 459) it was said, speaking of the doctrine of res ipsa loquitur: 'This presumption arises not out of the character of the carrier, but out of the nature of the accident. The injurious accident must be connected with the appliances for transportation which are provided by the carrier, are under its exclusive care and control, and whose condition it is bound to know.' "

Confessions—Contradicting Accused by Incompetent Confession.—In Cross *v.* State, 221 S. W. 489, the Supreme Court of Tennessee held that the accused who is a witness in his own behalf cannot be cross-examined as to an incompetent confession made by him.

The court said in part: "This action of the trial judge is assigned as error, and we think both upon principle and authority this evidence was incompetent and highly prejudicial to the plaintiff in error. The effect of its admission was to permit the State to prove

indirectly what the court had held it could not prove directly. We are unable to understand how evidence which is entitled to no credit, and which does not tend to prove the guilt of the prisoner, can be competent for the purpose of contradicting statements made by the accused on the witnesses stand. If the statements drawn from the accused while in custody by the flattery of hope, or by threats, are entitled to no credit as being truthful statements of what occurred, by the same parity of reasoning such statements can have no force as contradictions of the testimony of the plaintiff in error on the witness stand. The same reasons which forbid their admissibility in the one instance would make them incompetent in the other. It would certainly be unjust to impeach a witness by testimony which had been wrongfully obtained. The exclusion of the confession by the court was, in effect, holding that the same had been improperly obtained. If it were thus obtained—that is, by force, or by threats, or by influence of hope—it was not the free voluntary statement of the accused, and it would be most cruel to say that the witness is discredited, and that he is not entitled to be believed because of the confession made by him under such circumstances.

"In Harrold *v.* Oklahoma (169 Fed., 47) Judge Sanborn, in a very able opinion, in which the authorities are reviewed, says: 'A person charged with crime shall, at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him nor be mentioned at the trial. Now, the confession of this defendant was incompetent evidence against him. Did the fact that he availed himself of the privilege accorded to him by this statute make it competent? If so, did that fact make all incompetent evidence admissible against him? Did it make the confession and all other facts tending to establish his guilt provable against him by hearsay? Did it make his disclosure regarding his guilt, if any, to his attorney for the purpose of his defense admissible in evidence against him? All these questions must be answered in the negative, because the reason of the rule, and therefore the rule itself, apply with at least as much force to an involuntary confession after as before it is denied by the testimony of the accused. When it is offered by the prosecutor in chief it is incompetent evidence to overcome the simple presumption of the defendant's innocence, because it is unworthy of belief. It cannot be more worthy of belief, or more competent to overcome both that prsumption and the testimony of the defendant, after he has denied that he ever made it. The privilege granted to an accused person of testifying on his own behalf would be a poor and useless one indeed if he could exercise it only on condition that every incompetent confession induced by the premises or wrung from him by the unlawful secret inquisition and criminating suggestions of arresting or holding officers should become evidence against him.'

"In People *v.* Yeaton, 75 Cal. 415, 17 Pac. 544, the holding of the court is succinctly contained in the syllabus (75 Cal.), which is as follows: 'The defendant in a criminal prosecution, who is a witness in her own behalf, cannot be compelled, on cross-examination, to testify to statements made by her out of court, which amount to a confession of the crime, unless it be first shown that the confession was voluntary. And this is so, although the evidence be offered by the prosecution, not as a confession, but merely as contradictory statements, for the purpose of impeaching the witness.'

"In Shephard *v.* State (88 Wis., 185, 59 N. W., 449) the court said: 'The confession was rejected because it was extorted. It was unfair to the accused and should not be proved against him, and is condemned by the court and ruled out. When the defendant was asked if he made that confession and denied it, the same witnesses who extorted the confession and whose testimony was disallowed on that account are allowed to testify to the confession, however wickedly and wrongly it was obtained, on the exceedingly narrow theory that it is not admitted as a confession, but merely to contradict the witness. The confession is allowed to go to the jury and have its effect in convicting the defendant and override the ruling of the court that it was inadmissible as evidence against him for such a petty reason. The confession is just as objectionable as evidence, and as incompetent and hurtful, when offered in one way as in another. If no other evidence on the ground of contradicting the defendant as a witness could be found, he had better have gone uncontradicted than that his legal rights as a prisoner should be so violated and his conviction obtained by such unlawful testimony. The object is to get the confession in evidence. It cannot be done directly, but it can be done indirectly. It cannot be used to convict, but it can be used to contract the defendant, and in that way it is used to convict him all the same. We cannot adopt such a principle or practice in the administration of criminal law. It is unreasonable as well as unjust.'

"In Greenleaf on Evidence (15th Ed.) vol. 1, § 449, it is said: "It is a well-settled rule that a witness cannot be cross-examined as to any fact, which is collateral and irrelevant to the issue, merely for the purpose of contradicting him by other evidence, if he should deny it, thereby to discredit his testimony.'

"We therefore hold that the trial court was in error in permitting the State to cross-examine the witness as to said allege confession."

Stock and Stockholders—Right of Stockholder to Purchase New Shares Where Increase Authorized but Not Made.—In Hammer et al. *v.* Cash, 178 N. W. 465 the Supreme Court of Wisconsin, held that where the articles of incorporation were amended so as to authorize an increase in the capital stock of a railroad company for